



Supplement to the Final Statement of Reasons for Rulemaking
Including Summary of Comments and Agency Responses

**PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE
REGULATIONS APPLICABLE TO PORTABLE DIESEL ENGINES AND
DIESEL ENGINES USED IN OFF-ROAD AND ON-ROAD VEHICLES**

Public Hearing Date: January 28, 2010
Agenda Item Number: 10-1-2

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State of California
AIR RESOURCES BOARD

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I. GENERAL DISCUSSION

This Final Statement of Reasons (FSOR) provides an update to the Staff Report: Initial Statement of Reasons for Proposed Amendments (Staff Report). The Staff Report was released to the public on December 10, 2009 and is incorporated by reference herein. The Executive Officer determined it was necessary to bifurcate approval of the amendments to the regulations so that the most critical amendments would become legally effective as expeditiously as possible. The FSOR was submitted with the first part of the bifurcated regulatory amendment package, which was approved by the Office of Administrative Law on October 19, 2010. This supplement to the FSOR identifies and explains the amendments that were not included with the first part of the regulatory package. This supplemental FSOR also summarizes written comments the Board received on the proposed regulatory text published on November 10, 2010 and the ARB's responses to those comments.

I.a Description of Board Action

No additional information is presented in this Supplement; the discussion of the Board Action presented in the original FSOR remains applicable to this Supplement.

I.b Modifications to the Original Proposed Regulations

On January 28, 2010, the Board adopted resolution 10-2 which included amendments to the Portable Equipment Registration Program (PERP) Regulation, the Portable Engine Airborne Toxic Control Measure (ATCM), the In-Use Off-Road Vehicle Regulation, and the In-Use On-Road Heavy-Duty Diesel-Fueled Vehicle Regulation. The amendments for the latter two regulations only pertained to engines on water well drilling rigs. As part of this action, the Board directed staff to address certain issues, and make appropriate changes. Staff addressed these issues and, on March 15, 2010, sent out a notice proposing additional amendments to the PERP Regulation and Portable Engine ATCM for public comment for a period of 15 days (15-day notice). All of the amendments contained in that first 15-day notice along with the most

critical amendments from the original 45-day notice pertaining only to the engines on water well drilling rigs and the extension for uncertified engines were already approved on October 19, 2010 and are currently in effect.

In order to address the remaining issues as directed by the Board, staff sent out a second 15-day notice on November 10, 2010 proposing additional amendments to the PERP Regulation and Portable Engine ATCM. These additional amendments provided an exemption for engines on snow removal vehicles, further modified the recordkeeping and reporting requirements of the PERP Regulation, allowed districts to permit non-current tier certified engines under certain circumstances, and made other changes to improve clarity of the regulations.

Summary of Proposed Modifications

In the Second 15-day Notice, ARB made the following modifications to the text of the regulations:

PERP Regulation

1. Modified section 2451(c)(9) of the Statewide PERP Regulation to remove obsolete language regarding the usage of generators.
2. Modified section 2452(j) of the Statewide PERP Regulation and section 93116.2(a)(13) to make the definition of "Emergency Event" consistent in both regulations.
3. Modified section 2452(ii) of the Statewide PERP Regulation to improve clarity of the definition of "Providers of Essential Public Services".
4. Modified section 2452(mm) of the Statewide PERP Regulation to prevent engines from registering in PERP as resident engines if they were permitted by the local districts under the new provision of the ATCM in section 93116.3(b)(2)(E).
5. Modified section 2453(i) of the Statewide PERP Regulation to remove obsolete language and to exempt Providers of Essential Public Services from the requirement to update home district based on recordkeeping.
6. Modified section 2456(f)(1) of the Statewide PERP Regulation to allow engines on snow removal vehicles to be eligible for registration in PERP.
7. Modified section 2458(a) of the Statewide PERP Regulation to improve clarity of the recordkeeping requirements applicable to owners and/or operators of non-rental equipment.
8. Modified section 2458(b) of the Statewide PERP Regulation to further revise the recordkeeping requirements applicable to rental business owners and rental equipment operators.

9. Modified section 2458(e) of the Statewide PERP Regulation to revise the annual reporting requirements for owners of registered equipment units and deleted sections 2458(f) and (g) to remove the annual reporting requirements for registered engines.
10. Modified section 2459(a) of the Statewide PERP Regulation to clarify that only operators of equipment units are subject to this provision, not owners.
11. Added section 2459(h) of the Statewide PERP Regulation to establish a notification requirement for rental business owners of long-term rental transactions.

Portable Engine ATCM

1. Added section 93116.1(b)(11) of the Portable Engine ATCM to exempt portable engines on dedicated snow removal vehicles.
2. Modified section 93116.3(b)(1) of the Portable Engine ATCM to clarify the applicability of this provision.
3. Modified section 93116.3(b)(1)(B) of the Portable Engine ATCM to revise the requirements applicable to non-certified engines that are designated as emergency use or low use.
4. Modified section 93116.3(b)(2) of the Portable Engine ATCM to further improve clarify of the permit and/or registration eligibility requirements.
5. Added section 93116.3(b)(2)(E) to the Portable Engine ATCM to allow districts to permit or register non-current tier certified engines under certain circumstances until 2017.

I.c Discussion of the Second Submittal

The second submittal for approval contains amendments from two separate public notices:

1. The amendments published with the initial 45-day notice, as published in the original ISOR, which consist mainly of changes intended to improve clarity of the PERP Regulation and Portable Engine ATCM. (The amendments from the 45-day notice pertaining to water well drilling rigs and the extension for uncertified engines were approved on October 19, 2010).
2. The amendments published in the second 15-day notice. These amendments include changes to the regulations regarding engines on snow removal vehicles, recordkeeping and reporting requirements, a new notification requirement for rental companies, replacement of emergency use and low use engines, the permitting of non-current tier certified engines by local air districts, and other changes necessary to improve clarity of the regulations.

This supplement to the FSOR includes only comments pertaining to the amendments published in the second 15-day notice. The comments pertaining to the amendments published in the initial 45-day notice and first 15-day notice were included with the original FSOR.

Summary of Amendments Included in the Second Submittal

Below is a list of the regulatory sections that ARB is requesting approval for in this second submittal.

PERP Regulation

Title 13, California Code Of Regulations, sections 2451(c)(4), 2451(c)(9), 2452(d), 2452(g) 2452(j) 2452(ii) 2452(mm), 2452(tt), 2453(f), 2453(h), 2453(i), 2456(c), 2456(d), 2456(f)(1), 2456(f)(3), 2456(f)(7), 2456(g), 2457(b)(4), 2458(a), 2458(b), 2458(d) to (g), 2458(i), 2459(a), and 2459(h).

Portable Engine ATCM

Title 17, California Code Of Regulations, sections 93116.1(b)(8) to (11), 93116.2(a)(4) to (6), 93116.2(a)(13), 93116.2(a)(20), 93116.2(a)(37), 93116.2(a)(41), 93116.3(b)(1), 93116.3(b)(1)(B), 93116.3(b)(2), 93116.3(c)(1), 93116.3(d)(1)(B), and 93116.3(d)(2)(B).

All of these sections above are clearly noted in the Final Regulation Orders submitted with this rulemaking package. The following is a description of the amendments being submitted for approval in this second submittal.

PERP Regulation

1. Allow for applicants to submit electronic applications for registration in PERP. This affects sections 2453(f) and 2453(h) of the PERP Regulation.
2. Prohibit certain non-current tier certified engines permitted by the district from registering in PERP by revising the definition of "resident". This affects section 2452(mm) of the PERP Regulation.
3. Allow portable engines on dedicated snow removal vehicles to register in PERP. This affects sections 2456(f)(1) of the PERP Regulation.
4. Revise the recordkeeping requirements for all registered engines and equipment units. This affects sections 2458(a) and 2458(b) of the PERP Regulation.
5. Revise the annual reporting requirement for all registered equipment units and delete the annual reporting requirements for all registered engines. This affects sections 2458(e), 2458(f) and 2458(g) of the PERP Regulation.

The remaining subsections had to be renumbered due to the deletion of sections 2458(f) and 2458(g).

6. Require that rental business owners notify the local districts of long-term rental transactions. Section 2459(h) was added to the PERP Regulation.
7. Make miscellaneous language clarifications and remove obsolete language from the PERP Regulation. This affects sections 2451(c)(4), 2451(c)(9), 2452(d), 2452(g), 2452(j), 2452(ii), 2452(mm), 2452(tt), 2453(i)(1), 2456(c), 2456(d), 2456(f)(3), 2456(f)(7), 2456(g), 2457(b)(4), 2458(d), 2458(i), and 2459(a).

Portable Engine ATCM

1. Exempt portable engines on dedicated snow removal vehicles from the requirements of the Portable Engine ATCM. Section 93116.1(b)(11) was added to the Portable Engine ATCM, and the preceding sections (b)(9) and (10) had minor format changes to accommodate the addition of (b)(11).
2. Revise the requirements for non-certified engines that are designated as emergency use or low use. This affects sections 93116.3(b)(1)(B) of the Portable Engine ATCM.
3. Allow the local air district to permit non-current tier certified engines under certain circumstances. This affects sections 93116.3(b)(2)(E) of the Portable Engine ATCM.
4. Revise the fleet average calculation provision to further specify emission factors in the calculations. This affects sections 93116.3(d)(1)(B) of the Portable Engine ATCM.
5. Make miscellaneous language clarifications and remove obsolete language from the Portable Engine ATCM. This affects sections 93116.1(b)(8), 93116.2(a)(4) to (6), 93116.2(a)(13), 93116.2(a)(20), 93116.2(a)(37), 93116.2(a)(41), 93116.3(b)(1), 93116.3(b)(2), 93116.3(b)(2)(A) to (D), 93116.3(b)(3) to (6), 93116.3(c)(1), and 93116.3(d)(2)(B).

I.d Fiscal Impact of Proposed Changes

No additional information is presented in this Supplement; the discussion of fiscal impacts in the original FSOR remains applicable to this Supplement.

I.e Consideration of Alternatives

No additional information is presented in this Supplement; the discussion of alternatives considered in the original FSOR remains applicable to this Supplement.

II. SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES

II.a Written Comments Received During the Second 15-Day Public Comment Period

The Board received several written comments during the second formal 15-day comment period. This 15-day public comment period was open from November 10, 2010 to November 25, 2010. Persons submitting written comments during the public comment period are listed in Table 1. Following the list are summaries of each comment as well as agency responses. Each response includes an explanation of either any changes made or the reasons for making no change.

Table 1
List of Individuals & Businesses Submitting Written Comments
During the Second 15-Day Public Comment Period

Commenter Reference Code	Name & Affiliation	Date of Comment
KRUGER	Kruger, Daniel Private Citizen Location Unknown	11-17-10
SRM	Albrect, Michael Sierra Resource Management Sonora, California	11-23-10
MWDSC	Kaufman, Carol Metropolitan Water District of Southern Los Angeles, California	11-24-10
ARA	Graboski, Michael, Ph.D. American Rental Association Washington, D.C.	11-24-10
RCRC	Pitto, Mary Regional Council of Rural Counties Sacramento, California	11-24-10
SCEC	Lany, Karl SCEC Air Quality Specialists Orange, California	11-24-10
PGE	Lum, Megan Pacific Gas And Electric Company San Francisco, California	11-24-10

Comment 1:

A private citizen stated that the compliance dates in the Portable Engine ATCM should be reopened and adjusted to align with the requirements of the In-Use Off-Road Vehicle Regulation. (KRUGER)

Agency Response:

This comment is outside the scope of the modifications included in the 15-day notice. While we do recognize that similar engines are used in the two programs, it is important to understand that there is a major difference in the timing of the rules that have been adopted. In order to preserve emission reductions and protect public health, we have not proposed relaxing the compliance dates.

Comment 2:

A industry representative requested an additional two years be added to the extension that was provided for uncertified engines. (SRM)

Agency Response:

This comment is outside the scope of the modifications included in the 15-day notice. However, the one year extension provided should be enough time to replace or retire the engine. It is important to note that the requirement to remove uncertified engines from service by January 1, 2010 was first established in The Statewide PERP Regulation in 1997. Because this allowed businesses 14 years of useful life to recover the cost of the equipment, no further extension is warranted at this time.

Comment 3:

A few industry representatives questioned the removal of the language that allowed portable generators to provide power to stationary sources at remote locations. They believe it is not within the scope of the public notice and requested that this provision not be removed. (MWDSC, SCEC, PGE)

Agency Response:

The removal of obsolete language and other revisions for clarity are within this scope of the initial 45-day notice. Through the course of implementing the PERP Regulation, it has been found that the language regarding remote locations often causes confusion and makes enforcement more difficult. By removing this language, we are clarifying that providing power to stationary sources at remote locations must be done under the authority of the local air district. The other allowances such as unexpected interruptions of utility power, maintenance and repair, etc. remain in tact. Also, the use of a generator registered in PERP to provide power to portable equipment at remote locations has never been prohibited.

Comment 4:

The PERP regulation should be amended to allow equipment to be operated during the lag time from when an electronic notification is sent to the equipment owner that the equipment has been registered, and when the registration documents are received in the mail by the owner. (MWDSC, SCEC)

Agency Response:

This comment is outside the scope of the modifications included in the 15-day notice. No additional changes to the requirements for electronic notification of registration are being proposed with this notice. This issue concerns the implementation of the online registration system currently under development. ARB staff will conduct outreach and training for all users of this system once it is ready.

Comment 5:

The amendment to the recordkeeping requirements to include tracking of specific location for equipment units every time they are moved, even when moved to and from storage, is contrary to the goal of streamlining the regulation and reducing the regulatory burden on portable equipment owners. (MWDSC)

Agency Response:

It is a requirement of the PERP Regulation that registered equipment units may not be operated as part of an existing stationary source permitted by the district. The tracking of specific location every time the equipment unit is moved is necessary to improve the enforceability of this requirement.

Comment 6:

In order to simplify the recordkeeping requirements, the requirement to track specific location should be changed from where an engine or equipment unit is located to where it is operated. (MWDSC)

Agency Response:

In order for an engine or equipment unit to maintain its portable status, it may not reside at a location for more than 12 consecutive months. This is based on the entire time spent at the location, not time spent operating at the location. Therefore, the tracking of specific location must be based on where the engine or equipment unit is located, regardless of operation, in order to maintain the enforceability of this requirement.

Comment 7:

A couple of industry representatives expressed support of the proposed amendments regarding the removal of the annual reporting for engines. (MWDSC, SCEC)

Agency Response:

Thank you for your support.

Comment 8:

A representative from a local water district expressed support of the amendments regarding uncertified engines designated as emergency use or low use. (MWDSC)

Agency Response:

Thank you for your support.

Comment 9:

A representative from the rental equipment industry requested clarification regarding the requirement for the rental company to provide a copy of the registration documents to the rental customer. The representative wants to know if informing the rental customer that a copy of the registration documents are attached to the rental engine or equipment unit would satisfy this requirement. (ARA)

Agency Response:

Part of this requirement is that the rental company must maintain written evidence that the rental customer has received the copy of the registration documents. Keeping a copy of the registration documents on the rental equipment would satisfy this requirement as long as the rental customer provided written acknowledgement of this information as part of the rental transaction.

Comment 10:

A representative from the rental equipment industry stated that the rental company has no control over whether the rental customer actually keeps a copy of the rental transaction on site. The representative further states that there is no requirement for the rental company to inform the rental customer that they must do this. (ARA)

Agency Response:

This is an existing requirement from the PERP Regulation that specifies that the rental customer must keep a copy of either the rental agreement or equivalent document onsite with the rental unit. The language regarding that requirement has not been modified with these amendments. It is only underlined in this 15-day notice because the section has been reformatted. This requirement is listed in the operating conditions of all registration documents, which are required to be provided to the rental customer as discussed previously in comment 9.

Comment 11:

A representative from the rental equipment industry stated that many rental contracts are renewed on a month to month basis. The representative then asked if the notification requirement for rental transactions exceeding 9 months would kick in after a monthly contract has been renewed 8 times. (ARA)

Agency Response:

The notification requirement is applicable to all rental transactions that exceed 9 months, regardless of how the rental contracts may be administered.

Comment 12:

A representative from the rental equipment industry requested that the rental companies be immune from enforcement actions in certain situations such as the rental customer keeping a piece of rental equipment at one location longer than 12 months; or annual reports containing incomplete or inaccurate information due to the rental customer improperly filling out the log. (ARA)

Agency Response:

The proposed amendments clearly specify which recordkeeping requirements are the responsibility of the rental company and which are the responsibility of the rental customer. The local air districts have the authority to enforce the requirements of the PERP Regulation and will handle violations on a case-by-case basis. We will continue to work with the districts on these enforcement issues, and may add content to our Frequently Asked Questions (FAQ) document on our website.

Comment 13:

A representative from local government requested that ARB further exempt detachable snow blowing equipment from the Portable Engine ATCM, not just those on dual-engine vehicles with the snow blower permanently attached. (RCRC)

Agency Response:

Detachable snow blowers were not included as part of the original exemption request presented to the Board. The oral testimony presented at the Board hearing specifically requested an exemption for “snow blower machines that have a dual engine, one to propel the vehicle and one to power the snow blowing equipment”. The written comment letter presented to the Board mentions that the cost to replace these vehicles to be well over \$600,000, but makes no mention of the cost of detachable snow blowers. We agreed to exempt dual-engine snow blowers because it is extremely costly to replace auxiliary engines on certain dual-engine vehicles such as cranes, water well drilling rigs, etc. It has been our experience that detachable equipment, such as that used in construction and road paving, does not face this same challenge.

Comment 14:

An industry representative requested that guidance be developed regarding the compliance responsibilities of rental companies and rental customers and also regarding the statements of compliance for the fleet standards. (SCEC)

Agency Response:

We will work with the rental industry and the local districts on the implementation of these provisions and anticipate adding content to the Frequently Asked Questions (FAQ) document on our website.

Comment 15:

An industry representative wanted to confirm that the rental company does not have to record location in the log when in storage at the rental yard. Another industry representative stated that is not clear if the rental customer must maintain the log after the rental equipment is returned to the rental business. (SCEC, PGE)

Agency Response:

The amendments specify which recordkeeping requirements are the responsibility of the rental company and which are the responsibility of the rental customer. The language does not require the rental company to make entries in the recordkeeping log at any time, nor does it require the rental customer to keep a copy of the log after the rental transaction is over. Considering that the log must stay with the rental equipment, it would be impossible for the rental customer to continue to maintain the log after the unit was no longer in their possession.

Comment 16:

Industry representatives requested that the specific location be tracked only when the engine or equipment unit has been relocated. (SCEC, PGE)

Agency Response:

The amendments already require the specific location to be tracked every time a registered equipment unit is relocated. For registered engines, monthly location tracking is necessary to verify the engine has not resided in a location for more than 12 months. Reducing engine location tracking in the suggested manner would hinder the enforceability of this requirement.

Comment 17:

An industry representative requested that notification of rental transactions exceeding 9 months be made to the home district instead of the district in which the rental business is located. (SCEC)

Agency Response:

Rental companies often trade equipment between business locations and often across district boundaries, and the rental companies are not required to update the home district when this happens. Therefore, many pieces of rental equipment will have home districts listed on the registration that are nowhere near the location from where the equipment is being rented or stored. It makes sense to notify the local air district where the rental transaction took place because it is expected that most rental customers will use the rental equipment in or close to that air district.

Comment 18:

An industry representative requested that ARB develop a standardized method for the notification of rental transactions exceeding 9 months. (SCEC)

Agency Response:

This is an implementation issue and we will work with the rental industry and the local air districts on an effective solution.

Comment 19:

An industry representative requested that ARB delay enforcement of the amended provisions regarding recordkeeping and notification for 120 after they become effective in order to fully implement the new requirements. (SCEC)

Agency Response:

The local air districts are responsible for the enforcement of the requirements of the PERP Regulation, and the ARB does not have the authority to prohibit the districts from taking enforcement actions. Hopefully, the local districts will be reasonable when it come to compliance with new regulatory provisions.

Comment 20:

An industry representative stated that the proposed amendments in the Portable Engine ATCM regarding uncertified engines designated as emergency and low use is flawed. There is no need to add a commitment date of December 31, 2011 and the language suggests that if the owner commits to replacing the engine but instead later decides to just retire it, then the owner would be in violation. It would also be impossible for the regulatory agency to differentiate between an engine replacement and the initial registration of a current tier engine. (SCEC)

Agency Response:

The commitment date of December 31, 2011 was added to give the owners of uncertified engines the opportunity to designate them as emergency or low use if they had not already done so. The language states that the owner must remove these engines from service or replace the engine by January 1, 2017. This does not mean that they must irrevocably commit to one or the other. This allows them the flexibility to make the decision best for their business when the time arrives.

Regarding engine retirement, the owner simply has to cancel the permit or registration. Regarding engine replacement, the proper procedure would be that the owner cancel the permit or registration for the uncertified engine and then apply for a new permit or initial registration of the replacement engine. As long as all of the emergency use or low use uncertified engines are out of service through either retirement or replacement by January 1, 2017, there is no violation of this provision.

Comment 21:

An industry representative stated that engine dealers supported the amendments allowing the local air districts to permit resident certified engines. (SCEC)

Agency Response:

Thank you for your support.

Comment 22:

An industry representative stated that uncertified engines owned by a Provider of Essential Public Services (PEPS) are no longer exempt from recordkeeping, where previously the PERP Regulation exempted all engines owned by a PEPS from recordkeeping. (PGE)

Agency Response:

The language in the PERP Regulation did not explicitly require recordkeeping for uncertified engines owned by a PEPS. However, these engines have always been subject to the emission limits applicable to all uncertified engines. Recordkeeping requirements have been placed in the operating conditions of the registrations for these uncertified engines in order to verify compliance with these emission limits. These amendments simply incorporate language into the PERP Regulation clarifying the need for these records. The only remaining uncertified engines in PERP owned by a PEPS must be operating as emergency use or low use only. These engines are subject to additional recordkeeping as prescribed by the Portable Engine ATCM.